

National Electrical and Communications Association - Submission

Modern Awards Review 2023–24

October 2023

Justice Hatcher, President
Fair Work Commission
80 William Street
East Sydney NSW 2011
By email: chambers.hatcher.j@fwc.gov.au

Introduction

The National Electrical and Communications Association (NECA) is the peak body for Australia's electrical and communications industry, which employs 344,370 people and turns over more than \$82bn annually. NECA represents over 6,500 businesses performing works including the design, installation, and maintenance of electrical and electronic equipment in the construction, mining, air conditioning, refrigeration, manufacturing, communications, and renewable energy sectors.

NECA has advocated on behalf of the electrotechnology industry for over 100 years and helps its members and its industry to operate in an efficient, safe, and regulatorily compliant manner. NECA represents the interests of electrical and communication businesses to all levels of government and in regulatory, legislative and industry development forums. It is also a foundation member of the Australian Chamber of Commerce and Industry (ACCI).

NECA members make an essential economic contribution – connecting businesses, homes, and infrastructure – encouraging investment, improving reliability and energy security, and delivering affordable, environmentally sustainable outcomes. The safety and reputation of the electrical industry is critical to tradespeople, consumers, and the community.

NECA and its members are highly engaged in this space, particularly in the energy and electrotechnology sector and the design, installation and maintenance of the relevant infrastructure required for Australia's transition.

In regard to the specifics raised in the review NECA submit the following for your consideration:

Firstly, find below the rates and allowances in the *Electrical, Electronic and Communication Contracting Award 2020 (Award)* and the national minimum wage rates (NMW).

Classification	Hourly minimum	Wely rate	Above C13	Clause
C13 - minimum wage rate	23.23	882.74	N/A	N/A
Grade 1 - minimum rate	22.93	871.20	No	16.2
Grade 1 - ordinary rate	23.90	908.20	Yes	Sch B
Grade 2 - minimum rate	23.70	900.70	Yes	16.2
Grade 2 - ordinary rate	24.67	937.46	Yes	Sch B

Allowances	Wely	Hourly	Clause
Industry allowance	36.82	0.97	18.3(a)
Tool allowance	21.81	0.57	18.3(g)

NECA note that Appendix A (National Minimum Wage Order 2023) of the Fair Work Order dated 20 June 2023 (**NMW Order**) states the following:

- At clause 4.1 – “*The national minimum wage is \$882.80 per week, calculated on the basis of a week of 38 ordinary hours, or \$23.23 per hour.*” Notably, this calculation appears to be incorrect as \$23.23 multiplied by 38 ordinary hours is \$882.74 and not \$882.80.
- At clause 4.2 – “*The national minimum wage applies to an award/agreement free employee.*”
- At clause 4.3 – “*An employer of an employee to whom the national minimum wage applies must pay the employee a base rate of pay that at least equals the national minimum wage.*” Where base rate of pay is defined in the *Fair Work Act 2009* as the rate of pay payable to the employee for his or her ordinary hours of work, but not including things such as monetary allowances.

NECA would further mention:

- Clause 16.2 of the Award shows the minimum rates for an employee other than an apprentice (without allowances). The Electrical worker grade 1 minimum rate is currently lower than the C13 NMW by \$0.30c per hour.

- Clause 2.3 of the Award defines the ordinary hourly rate as the minimum weekly rate for an employee's classification specified in clause 16.2, plus the industry allowance and any applicable additional all purpose allowances divided by 38.
- Given the ordinary hourly rate includes the minimum weekly rate, the industry allowance and any applicable additional all purpose allowances divided by 38 (including tool allowance) it could be argued that given all workers covered by the Award are entitled to the industry allowance, the minimum wage for an employee at the Electrical worker grade 1 pay rate is in excess of the C13 NMW rate and that to increase the minimum ordinary hour further would increase the ordinary hourly rate even further above the C13 rate.
 - We note that the NMW Order states that an employee should be paid a 'base rate of pay' which as mentioned does not include allowances.
- However, an argument could be made that the NMW is set for award/agreement free employees who are generally only entitled to the National Employment Standard (**NES**) minimum entitlements and would generally not be entitled to allowances and other entitlements set out in the Award (such as the industry allowance in this case). Further, we note that the other entitlements set out in the Award sufficiently compensate or offset the Electrical worker grade 1 more than the \$0.30 difference between their minimum rate of pay and the NMW.
- Regarding the accuracy of the Table in Attachment D, the weekly pay rates appear to align with those in the Award, However, in the comments section of the table it states that "the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13". Although this is true, Schedule B – Summary of Hourly Rates of Pay in the Award states that the ordinary hourly rate in Schedule B (to which they reference) includes both the industry allowance and the tool allowance. However, given an Electrical worker grade 1 is defined as a labourer, NECA are of the view that the Electrical worker grade 1 may not be eligible for the tool allowance.

Conclusion

NECA are of the view that:

- although the minimum rate of pay is \$0.30 below that of the NMW C13 rate, the ordinary rate of pay under the Award (which includes at a minimum the industry

allowance) for each and every employee in the Electrical and Communication industry is sufficient to more than cover this difference;

- the NMW was set and deemed sufficient by the Fair Work Commission who understood that employees that the NMW relates to are not covered by an applicable award or agreement and as such are only entitled to the minimum standards set out in the NES, and not any additional entitlement such as those found in the Award; and
- without any change to the Electrical worker level 1 minimum pay rate, an employee at this level is better off than an employee covered by the NMV.

Based on the above it is the view of NECA that no changes be made to the Electrical worker rate 1 minimum pay to bring it in line with the NMW as the Award sufficiently covers any difference through an industry wide allowance and other entitlements.

Should you wish to discuss any matter relating to the submission, please contact NECA's Head of Government Relations and Regulatory Affairs, Kent Johns, at kent.johns@neca.asn.au or on 0467 660 110.

Yours sincerely



Oliver Judd
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National Electrical and Communications Association